

BEFORE THE ARIZONA CORPORATION COMMISSION

2	COMMISSIONERS	Arizona Corporation Commission
3	KRISTIN K. MAYES, Chairman GARY PIERCE	DOCKETED OCT 21 2009
4	PAUL NEWMAN SANDRA D. KENNEDY	DOCKETED BY
5	BOB STUMP	ne
6	In the matter of:) Docket No. S-03491A-02-0000
7	MARK KESLER	SETTLEMENT AGREEMENT ANDORDER RE: SAME BY: MARK KESLER
8	Respondent.	
9) DECISION NO. 71300
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11	 I. SETTLEMENT AGREEMENT. Plaintiff, the Arizona Corporation Commission ("Commission"), and Defendant 	
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14	Mark Kesler ("Kesler"), parties in the case of Arizona Corporation Commission v. American	
15	National Mortgage Partners L.L.C. et al., Maricopa County Superior Court No. CV2003-005724	
16	(the "lawsuit"), desire to resolve the portion of the lawsuit involving them and thus enter into this Settlement Agreement ("Agreement"). 2. In settlement of the lawsuit, Kesler elects to permanently waive his right to a trial of the lawsuit. Kesler admits the jurisdiction of the Superior Court over the subject matter of this	
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20	lawsuit.	
21	3. Kesler consents to the er	ntry of the Proposed Judgment attached as Exhibit B to this
22	Agreement.	
22	4. Kesler neither admits no	or denies that he offered and sold interests through ANMP

5. Kesler neither admits nor denies that he violated A.R.S. §44-1991, either directly or indirectly, when he offered and sold interest through ANMP. The Commission alleges that Kesler

while the interests were not registered and Kesler was not registered to offer and sell securities

violating A.R.S. §§ 44-1841, 1842 and 44-2032.

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employed devices, schemes or artifices to defraud, made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made and/or engaged in any transaction, practice or course of business which operated or would operate as a fraud or deceit when Kesler offered and sold interests in ANMP.

- 6. Kesler acknowledges that he was the subject of a prior Cease and Desist Order of the Commission, Docket No. S-03491A-02-0000.
- 7. Kesler, pursuant to A.R.S. § 44-2032, agrees that he is to be permanently enjoined from violating the Securities Act.
 - 8. Kesler agrees to entry of judgment against him of \$135,000 in restitution.
- 9. Kesler agrees that the funds paid for restitution will be turned over to the Receiver assigned to this matter and will be used to fund restitution to investors. If at the time Kesler pays the restitution amount, the Receiver has already fully repaid investors for their losses, Kesler's repayment would then go to the state of Arizona general fund.
 - 10. Pursuant to A.R.S. § 44-2037, Kesler agrees to pay a civil penalty of \$20,000.
- 11. Pursuant to A.R.S. § 44-2032(1)(a), Kesler agrees to pay \$20,000 for contempt of a Temporary Cease and Desist Order, Docket No. S-03491A-02-0000, related to the same activities.
- 12. Kesler acknowledges that he has been fully advised of his right to a trial to present evidence and call witnesses and Kesler knowingly and voluntarily waives any and all rights to a trial of this matter.
- 13. Kesler knowingly and voluntarily waives any right he may have under to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of Exhibit B, the proposed judgment.
- 14. Kesler acknowledges and agrees that this Agreement is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

- 15. Kesler understands and acknowledges that he has a right to seek counsel regarding this Settlement Agreement, and that he has had the opportunity to seek counsel prior to signing this Settlement Agreement. Kesler acknowledges and agrees that, despite the foregoing, he freely and voluntarily waives any and all right to consult or obtain counsel prior to signing this Settlement Agreement.
- 16. By consenting to the entry of the Judgment, Kesler agrees to refrain from taking any action or to making, or permitting to be made, any public statement denying, directly or indirectly, or calculated to create the impression that the legal conclusions contained in Paragraphs 4, 5 and 6 of the Agreement are without merit.
- 17. While this Order settles the lawsuit between Kesler and the Commission, Kesler understands that this Order does not preclude the Commission from instituting other administrative or civil proceedings based on violations that are not addressed by the lawsuit.
- 18. Kesler understands that this Agreement does not preclude the Commission from referring this matter to any governmental agency for administrative, civil, or criminal proceedings that may be related to the matters addressed by the lawsuit.
- 19. Kesler understands that this Agreement does not preclude any other agency or officer of any governmental agency or its subdivisions from instituting administrative, civil or criminal proceedings that may be related to matters addressed by this Agreement or the lawsuit.
- 20. Kesler agrees that he will not apply to the state of Arizona for registration as a securities dealer or salesman or for licensure as an investment adviser or investment adviser representative at any time in the future.
- 21. Kesler agrees that he will not exercise any control over any entity that offers or sells securities or provides investment advisory services within or from Arizona at any time in the future.
- 22. Kesler agrees that he will not sell any securities in or from Arizona without being properly registered in Arizona as a dealer or salesman, or exempt from such registration;

Respondent will not sell any securities in or from Arizona unless the securities are registered in Arizona or exempt from registration; and he will not transact business in Arizona as an investment adviser or an investment adviser representative unless properly licensed in Arizona or exempt from licensure.

- 23. Kesler understands that default shall render him liable to the Commission for its costs of collection and interest at the legal rate determined by law.
- 24. Kesler agrees that he will continue to cooperate with the Securities Division and the Receiver including, but not limited to, providing truthful, complete and accurate testimony at any hearing or trial in this matter and cooperating with any governmental agency in any related investigation or any other matters arising from the activities described in the lawsuit.
- 25. Kesler agrees not to challenge the imposition or continuation of the Receivership. Reasonable inquiries into the amount and nature of fees requested by the Receiver and/or their counsel shall not be deemed a challenge to the imposition or continuation of the Receivership.
 - 26. Each party shall bear its own attorneys' fees and costs.
- 27. Kesler acknowledges that this Agreement must be approved by the Commission at a noticed Open Meeting.
- 28. The Commission and Kesler agree that upon approval of this Agreement, counsel for the Commission shall, as soon as practicable, execute and cause to be filed the attached Stipulation to Entry of Judgment (Exhibit A to this Agreement) and Judgment (Exhibit B to this Agreement).

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29. This Agreement resolves the lawsuit brought by the Commission against Kesler. It does not resolve the portion of the lawsuit pertaining to any other named Defendant.

Mark Kesler

SUBSCRIBED AND SWORN TO BEFORE me this 18th day of September, 2009.

NOTARY PUBLIC

My Commission Expires:

9/21/2010



II.

ORDER

The Arizona Corporation Commission ("Commission") having reviewed the Settlement Agreement entered into between Mark Kesler and the Securities Division of the Commission ("Division") and finding the Settlement Agreement to be in the public interest, the Commission finds that the following Order is appropriate and in the public interest:

IT IS ORDERED that the Settlement Agreement between the Commission and Kesler is approved.

Decision No.

IT IS FURTHER ORDERED that the Securities Division is authorized to dismiss Kesler as 1 a named Respondent In the Matter of American National Mortgage Partners, L.L.C. et al., Docket 2 3 No. S-03491A-02-0000. 4 IT IS FURTHER ORDERED that this Order shall become effective immediately. 5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION 6 7 8 OMMISSIONER CHAIRMAN 9 10 11 COMMISSIONER COMMISSIONER COMMISSIONER 12 13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON. Executive Director of the Arizona Corporation 14 Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the 15 Capitol, in the City of Phoenix, this 2/5/ day of 16 Octoben , 2009. 17 18 ERNEST G. JOHNSON **EXECUTIVE DIRECTOR** 19 20 21 DISSENT 22 23 DISSENT 24 25 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. 26 (wc)

1	SERVICE LIST FOR: MARK KESLER			
2	Lawrence E. Wilk, Esq. Jaburg & Wilk, PC			
3	3200 N. Central Ave. 20 th Fl Phoenix, Arizona 85012-2440			
4				
5	Michael Salcido Buckley King			
6	2020 North Central Avenue, Suite 1120 Phoenix, Arizona 85004			
7	Larry and Sheila Dunning 2914 S. Ocean Blvd.			
8	Highland Beach, Florida 33487			
9	Phil Vigarino 41916 N 45 th GLN			
0	Phoenix, Arizona 85086-1455			
]	LaVelle & LaVelle, PLC 2525 East Camelback Road, Suite 888			
12	Phoenix, Arizona 85016			
13	Mark Kesler			
14	6638 West Rose Garden Lane Phoenix, Arizona 85308			
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EXHIBIT A

Decision No. 71300

,	ARIZONA CORPORATION COMMISSION			
1	Wendy Coy, #013195 1300 West Washington, 3 rd Floor			
2	Phoenix, Arizona 85007			
3	Attorney for Plaintiff			
,	Telephone: (602) 542-0633 Fax: (602) 594-7418			
4	wcoy@azcc.gov			
5	STATE OF ARIZONA			
6	MARICOPA COUNTY SUPERIOR COURT			
ļ	ARIZONA CORPORATION COMMISSION) No. CV2003 005724		
7	Plaintiff) STIPULATION FOR ENTRY OF		
8	V) JUDGMENT		
9	V.	RE: MARK KESLER		
10	AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C., et al.) (Assigned to the Honorable Douglas Rayes)		
11	D. C. 1.			
12	Defendants.) DECISION NO		
13	Plaintiff, the Arizona Corporation Commission and Defendant Mark Kesler, hereby			
14	stipulate to entry of the attached Judgment.			
15	Dated this day of October, 2009.			
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17	ARI	ZONA CORPORATION COMMISSION		
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19	By Ţ	Vanda Car		
20	1	Wendy Coy Attorney for the Arizona Corporation		
21		Commission		
22	Dated this day of October, 2009.			
23				
24	By	Mark Kesler		
25		ATTEN TERRITO		
26				

1	ORIGINAL of the foregoing e-filed
2	this day of October, 2009 with:
3	Clerk of the Maricopa County Superior Cour
4	Copies of the foregoing mailed this day of October, 2009 to:
5	Maricopa County Superior Court
6	The Honorable Douglas Rayes 101 West Jefferson, ECB Room 411
7	Phoenix, Arizona 85003-2243
8	Copies of the foregoing mailed this day of October, 2009 to:
9	Lawrence E. Wilk, Esq.
ιo	Jaburg & Wilk, PC 3200 N. Central Ave. 20 th Fl
1	Phoenix, Arizona 85012-2440 Attorney for Receiver
12	Michael Salcido
13	Buckley King 2020 North Central Avenue, Suite 1120
14	Phoenix, Arizona 85004 Attorney for Defendant Caspare
15	Larry and Sheila Dunning
16	2914 S. Ocean Blvd. Highland Beach, Florida 33487
17	Phil Vigarino
18	41916 N 45 th GLN Phoenix, Arizona 85086-1455
19	LaVelle & LaVelle, PLC
20	2525 East Camelback Road, Suite 888 Phoenix, Arizona 85016
21	Mark Kesler
22	6638 West Rose Garden Lane Phoenix, Arizona 85308
23	/s/ Veronica Sandoval
24	Legal Assistant, Securities Division
25	

EXHIBIT B

Decision No. 71300

1 2 3 4 5	ARIZONA CORPORATION COMMISSION Wendy Coy, #013195 1300 West Washington, 3 rd Floor Phoenix, Arizona 85007 Attorney for Plaintiff Telephone: (602) 542-0633 Fax: (602) 594-7418 wcoy@azcc.gov					
6	STATE OF ARIZONA					
7	MARICOPA COUNTY SUPERIOR COURT					
8	ARIZONA CORPORATION COMMISSION	No. CV2003 005724				
9	Plaintiff) JUDGMENT				
10	v.	RE: MARK KESLER				
1 2	AMERICAN NATIONAL MORTGAGE PARTNERS, L.L.C., et al.) (Assigned to the Honorable Douglas Rayes))				
13	Defendants.	DECISION NO				
14 15 16	Upon stipulation of Plaintiff, the Arizona Corporation Commission ("Commission") and Defendant Mark Kesler ("Kesler") and good cause appearing: IT IS HEREBY ORDERED pursuant to A.R.S. § 44-2032 Kesler shall be permanently					
18	enjoined from violations of the Arizona Securities Act, A.R.S. § 44-1801 et seq.					
19	IT IS FURTHER ORDERED that judgment shall be entered in favor of the Commission					
20	against Mark Kesler in the amount of \$135,000 for restitution.					
21	IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2037, civil penalty shall be					
22	imposed against Mark Kesler in the amount of \$20,000.					
23	IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2032, civil penalty for					
24	contempt of a prior Commission order shall be in	nposed against Mark Kesler in the amount of				
25	\$20,000.					
26	IT IS FURTHER ORDERED that the Commission and Kesler shall bear their own					
	attorneys' fees and costs.	` · · · · ·				

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1	IT IS FURTHER ORDRED that interest shall accrue on all damages at the legal rate of	
2	ten percent per annum from date of entry of this Judgment until fully paid.	
3	IT IS FURTHER ORDERED that there is no just reason for delay and this judgment shall	
4	be entered immediately.	
5	ORDERED this, 2009.	
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8	Honorable Douglas Rayes Judge of the Superior Court	
9	Judge of the Superior Court	
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